

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO. 1510/2018**

**(ARISING OUT OF SPECIAL LEAVE PETITION (CrI.) No. 3209 OF 2018)**

PARVENNA AKHTAR

... **Appellant**

**VERSUS**

GHULAM MOHAMMED BHAT & ORS.

... **Respondent(s)**

**O R D E R**

Leave granted.

**2.** This appeal by special leave is directed against the impugned order dated 27.02.2018, passed by the High Court of Jammu and Kashmir at Srinagar in Petition No. 561-A No. 67/2017, whereby the High Court allowed the petition filed by respondent no. 1 (father-in-law of the appellant) and quashed the application filed by the appellant under Section 12 of Jammu and Kashmir Protection of Women from Domestic Violence Act, 2010 (hereinafter referred to as '**D.V. Act**') and also quashed the proceedings initiated thereupon by the Learned Judicial Magistrate First Class (Sub Registrar), Srinagar.

**3.** Brief facts of the case are that the appellant is a permanent resident of the State of Jammu & Kashmir and she got married to son of respondent no. 1, in 2008, as per the tenets of Muslim personal law. A girl child was born out of the wedlock. However, appellant claims that she has been deserted by her husband and in-laws after sometime and appellant had to live in a rented accommodation with her minor girl child. Appellant was not taken back in the matrimonial home and in 2017, she was diagnosed with Cancer, for which she is undergoing medical treatment.

**4.** On 11<sup>th</sup> January 2017, respondent no. 1 filed a complaint under Section 100 of Jammu and Kashmir Criminal Procedure Code (hereinafter referred to as '**J&K Cr.P.C**'),<sup>1</sup> for issuance of search warrant, for production of the minor girl child of the appellant. Therein, Learned Magistrate vide order dated 16.01.2017, issued show cause notice to the appellant and also ordered to produce the minor child before the Court. Aggrieved by the same, appellant filed a revision petition against the above-said order regarding production of minor girl child in the Court, on grounds that appellant is the natural guardian of the child and she cannot be said to have illegally confined her own minor daughter. This revision petition was dismissed by the

<sup>1</sup> Section 100 (J&K Cr.P.C): Search for persons wrongfully confined

Sessions Judge, vide order dated 06.02.2017. Thereafter, appellant approached the High Court by filing petition viz., 561-A no. 20/2017, praying for quashing of the Section 100 of J&K Cr.P.C complaint, filed by respondent no. 1.

**5.** Appellant also filed a complaint under Section 12 of D.V. Act against respondent no. 1 to 8, as she was apprehending forcible dispossession of the custody of her minor girl child. Appellant also sought prohibition orders against the respondents from causing violence to the appellant and also for prohibiting the respondents from entering in the school of her minor girl child and making any contact with her. Further, in the Complaint itself, appellant sought relief for grant of monthly expenditure for medical expenses, loss of earning and other such earnings to the tune of Rs. 35,000/- per month. Thereafter, the Court of Judicial Magistrate First Class (Sub Registrar), vide order dated 02.02.2017, passed a protection order in favor of the appellant, prohibiting the respondents from entering the school of minor girl child or any other place of appellant and her daughter. The respondents were further prohibited from communicating with the appellant in any manner or mode whatsoever and were directed to stay away from the relatives of the appellant. Station House Officer (SHO), Soura was designated as the protection

officer in terms of Section 12 of D.V. Act, and directed to ensure the implementation of the order, in its letter and spirit.

**6.** Being aggrieved by the same, respondent no. 1 approached the High Court by filing a petition viz., 561-A no. 67/2010 on 05.04.2017, praying for quashing the aforesaid order dated 02.02.2017 and also for quashing the entire proceedings initiated by appellant under the D.V. Act. Respondent's petition was based on the grounds that appellant has already been divorced and there has been a family settlement through the Mohalla Committee, whereby the appellant agreed to give custody of the minor girl child to the respondents.

**7.** The High Court clubbed both the petitions viz., one petition filed by appellant and the other filed by respondent no. 1, and heard them together. Thereafter, High Court vide impugned order dated 27.02.2018, allowed both the petitions. It quashed the Section 12 of D.V. Act proceedings on grounds that the domestic violence complaint was filed after 2 years of entering into the family settlement dated 17.11.2015, and it appears to have been used as a tool of harassment by the appellant. Further, the High Court also quashed the Section 100 of J&K Cr.P.C proceedings initiated by the respondent No. 1 on grounds that minor girl is in the custody of her mother i.e. appellant

herein and it cannot be said to be an illegal confinement. Therefore, the High Court ordered that the minor girl shall remain in the custody of her mother i.e. appellant herein and the grandfather of the minor girl i.e. respondent no. 1 herein shall be allowed to meet the minor girl child once in a fortnight.

**8.** Learned Counsel for the appellant submits that the respondent no. 1 had not taken plea of divorce or any family settlement regarding the custody of the minor girl child in his Section 100 of J&K Cr.P.C complaint or even in his reply to the domestic violence complaint made by the appellant. It was also submitted that the alleged '*talaknama*' dated 14.02.2017 is subsequent to the date of Section 12 of D.V. Act complaint filed by the appellant. Further, the alleged talaknama was an unregistered document and fabricated by the respondents as an afterthought.

**9.** On the issue regarding the family settlement through the Mohalla Committee, the learned counsel for the appellant submits that the copy of the minutes of the Mohalla Committee meeting produced by the respondents is undated and the bare reading of the document itself negates any settlement between the parties. It was further submitted that the High Court erred in relying on the alleged family settlement and holding that the appellant has made the

domestic violence complaint only to harass the respondents.

**10.** Learned counsel appearing for the respondents has not filed any counter affidavit and made only oral arguments denying the allegations made in the complaint(s) as well as the present petition.

**11.** Having heard learned counsel(s) appearing for the parties and upon perusing the materials placed before us, particularly, the impugned order dated 27.02.2018, it is evident that the High Court quashed the Section 12 of D.V. Act complaint, after relying on the '*family settlement*' which is claimed to have been arrived at between the appellant and the respondents. However, on perusal of minutes of mohalla committee meeting held in the year 2016, shows that appellant agreed to go to her marital home but unfortunately even after two years, husband of the appellant i.e. respondent no. 2, could not take any decision regarding taking back the appellant into the marital home. Further, in this connection, the chairman and other persons of the coordination committee went to respondent no. 2, but he categorically refused to take back the appellant, in the presence of mutavali. Thereafter, one week time was given to the respondent no. 2, to explain his relationship with the appellant and orders were passed against him, pertaining to the payment of maintenance to the appellant.

**12.** In the above facts and circumstances of the case, we are of the considered view, that the High Court should not have quashed the complaint filed by the appellant, under Section 12 of D.V. Act and rather should have allowed the concerned trial Court to consider the allegations on its own merits, after adducing the evidence by the parties.

**13.** Accordingly, we set aside the order of the High Court and restore the proceedings filed under Section 12 of D.V. Act at the trial Court, with liberty to both the parties to adduce evidence in the matter. We also make it clear that we have not made any observations on the merits of the case and trial court shall adjudicate the matter independently, without being influenced by dicta of this Court.

**14.** The appeal is disposed of in the afore-stated terms.

.....**J.**  
**(N.V.RAMANA)**

.....**J.**  
**(MOHAN M.SHANTANAGOUDAR)**

**NEW DELHI,**  
**3<sup>RD</sup> DECEMBER, 2018.**

ITEM NO.38

COURT NO.5

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3209/2018

(Arising out of impugned final judgment and order dated 27-02-2018 in 561A No. 67/2017 passed by the High Court of Jammu & Kashmir at Srinagar)

PARVENNA AKHTAR

Petitioner(s)

VERSUS

GHULAM MOHAMMED BHAT &amp; ORS.

Respondent(s)

(WITH PRAYER FOR INTERIM RELIEF & IA 137313/2018-APPLICATION FOR DIRECTIONS)

Date : 03-12-2018 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Petitioner(s)

Mr. Ramesh Kumar Mishra, AOR

Mr. Rajnish Kumar Singh, Adv.

For Respondent(s)

Ms. Sanjana Saddy, Adv.

Mr. T. Mahipal, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is disposed of in terms of the signed order.

Pending application filed in the matter also stands disposed of.

(VISHAL ANAND)  
COURT MASTER (SH)

(RAJ RANI NEGI)  
ASSISTANT REGISTRAR

(Signed Order is placed on the file)

